guished from a date, both days are to be included. *Bellasis* v. *Hester*, 1 Ld. Raym. 280; *Chiles* v. *Smith*, 52 Ky. 460; *Leavenworth Coal Co.* v. *Barber*, 47 Kan. 29, 27 Pac. 114. On the other hand, to prevent hardship or forfeiture, the general rule has often been discarded, the first and last days being included or excluded as the case required. *Lester* v. *Garland*, 15 Ves. 248; *Pugh* v. *Duke of Leeds*, Cowp. 714; *Price* v. *Whitman*, 8 Cal. 417; *Taylor* v. *Brown*, 5 Dak. 335, 40 N. W. 525. The law is even more uncertain when the last day falls on Sunday. With respect to contracts the Sunday is generally excluded, and performance may properly occur on Monday. *Campbell* v. *Life Assurance Society*, 41 Bosw. 299; *Hammond* v. *Life Ins. Co.*, 10 Gray (Mass.) 306; *Everett* v. *Stewart*, 2 Conn. 69. But in the computation of statutory periods there can be no extension of time. *Alderman* v. *Phelps*, 15 Mass. 225; *Patrick* v. *Faulke*, 45 Mo. 312; *Harrison* v. *Sager*, 27 Mich. 476. *Contra*, *West* v. *West*, 20 R. I. 464, 40 Atl. 6. Statutes providing for the exclusion of Sunday have changed the latter rule in many jurisdictions. U. S. REV. STAT., § 5013; N. Y. CODE CIV. PROC., § 788; KY. CIV. CODE PRAC., § 681. But curiously, these statutes have been considered as requiring performance on Saturday instead of permitting an extension until the following Monday. *Frankfort* v. *Farmers' Bank*, 20 Ky. L. 1635, 49 S. W. 811; *Allen* v. *Elliott*, 67 Ala. 432. Again, it has been held that these statutes have no application where the period in question covers a number of years. *Williams* v. *Lane*, 87 Wis. 152, 58 N. W. 77; *Haley* v. *Young*, 144 Mass. 364. The many fine-spun distinctions drawn by the courts relative to this question seem unjustifiable. Computation of time is a matter purely of technical construction, and no reason appears why a definite principle should not be formulated to apply equally to all cases. The rights and liabilities of parties with respect to a matter which so often leads to important consequences should be fixed and certain.

MARRIAGE — VALIDITY — MARRIAGE BY MAIL. — In a statutory action to recover damages for death caused by wrongful act, it was necessary for the plaintiff to show that she was the widow of the deceased. The deceased, while residing in Minnesota, had sent to the plaintiff, who was living in Missouri, a written agreement in duplicate, signed by him, whereby the parties undertook to assume from that date henceforth the relation of husband and wife. The woman had signed the papers and had sent one back to the man. *Held*, that this constituted a valid marriage. *Great Northern Ry. Co.* v. *Johnson*, 254 Fed. 683 (Circ. Ct. App.).

For a discussion of this case, see NOTES, page 848.

MUNICIPAL CORPORATIONS — LICENSES — VALIDITY OF ORDINANCES ALLOWING CONSTRUCTION OF BRIDGE OVER STREET AND VACATING STREET. — The city council by ordinance authorized the defendant refining company to build a bridge across a public street connecting its syrup house with its can factory. Later the council passed another ordinance vacating that portion of the street within the limits of the defendant's property. The company constructed the bridge and fenced off both ends of the street. The plaintiffs petition to have the street reopened and the bridge and fences removed. *Held*, that the petition be granted. *People ex rel. Burton* v. *Corn Products Refining Co.*, 121 N. E. 574 (Ill.).

It is settled that a municipality holds its streets in trust for the use of the public. *Wiehe* v. *Pein*, 281 Ill. 130, 117 N. E. 849; *Winter Brothers* v. *Mays*, 170 Ky. 554, 186 S. W. 127. Without express legislative authority a municipality may not grant to a private person the right to obstruct that use. *Royster Guana Co.* v. *Lumber Co.*, 168 N. C. 337, 84 S. E. 346; *Porche* v. *Barrow*, 134 La. 1090, 64 So. 918. See 2 ELLIOTT, ROADS AND STREETS, 3 ed., § 836. In holding that a city has no power to authorize the construction of a bridge over

a public street solely for private use, the court in the principal case follows the weight of authority. *Tilly* v. *Mitchell & Lewis Co.*, 121 Wis. 1, 98 N. W. 969; *Bybee* v. *State*, 94 Ind. 443. But see *Rothschild & Co.* v. *Chicago*, 227 Ill. 205, 81 N. E. 407. See also 3 DILLON, MUNICIPAL CORPORATIONS, 5 ed., § 1176. It is submitted, however, that the overhead bridge relieves street traffic *pro tanto* and so is not an obstruction but is rather a legitimate highway use. *Leitchfield Mercantile Co.* v. *Commonwealth*, 143 Ky. 163, 136 S. W. 639; *Kellogg* v. *Cincinnati Traction Co.*, 80 Ohio St. 331, 88 N. E. 882. As regards vacation of streets, power to authorize the same is customarily vested by the legislature in some municipal body. *Lowden* v. *Starr*, 171 Iowa, 528, 154 N. W. 331; *Curtiss* v. *Charlevoix Golf Ass'n*, 178 Mich. 50, 144 N. W. 818. This power, while discretionary with public officials, cannot be exercised arbitrarily. See *People ex rel. Brooklyn Cooperage Co.* v. *Gokey*, 177 App. Div. 61, 163 N. Y. Supp. 693; *City of Goldfield* v. *Golden Cycle Mining Co.*, 60 Colo. 220, 152 Pac. 896; 3 ABBOTT, MUNICIPAL CORPORATIONS, §§ 939, 940. Furthermore, the vacation of a street must be primarily for public, not for private benefit. *Sherwood* v. *City of Paterson*, 88 N. J. L. 456, 94 Atl. 311. See *Stevens* v. *City of Dublin*, 169 S. W. 188 (Tex. Civ. App.); TIEDEMAN, MUNICIPAL CORPORATIONS, § 308. In the principal case there was no evidence of benefit to the public through vacation of the street; the sole benefit accrued to the refining company. In fact, upon passage of the ordinance, the company fenced off the street. It seems, therefore, that the court properly declared this ordinance void.

PRINCIPAL AND SURETY — DEFENSES OF SURETY — CREDITOR'S FAILURE TO RECORD MORTGAGE. — The defendant, payee of a note secured by a chattel mortgage, indorsed the note and assigned the mortgage to the plaintiff. The mortgage was never recorded. Consequently, the maker's trustee in bankruptcy took the chattel free of the mortgage lien. The plaintiff sued the defendant as indorser of the note. *Held*, that he is discharged. *Auto Brokerage Co., Inc.* v. *Morris & Smith Auto Co., Inc.*, 174 N. Y. Supp. 188 (Sup. Ct.).

A creditor generally owes the surety no duty of affirmative action against the principal. The surety has no defense because the creditor's mere inactivity caused a loss of the latter's security, as by failing to foreclose a mortgage or suffering a judgment lien to expire. *Sheldon* v. *Williams*, 11 Neb. 272; *Kindt's Appeal*, 102 Pa. 441. This is because the surety can himself pay the debt and preserve the security. But where the creditor fails to do something which is peculiarly in his power to do, as recording a mortgage or other security, the surety should be discharged. *Bennett* v. *Taylor*, 43 Tex. Civ. App. 30, 93 S. W. 704; *Sullivan* v. *State*, 59 Ark. 47, 26 S. W. 194; *Burr* v. *Boyer*, 2 Neb. 265. *Contra*, *Philbrooks* v. *McEwen*, 29 Ind. 347; *Westchester Mortgage Co.* v. *McIntire*, 174 N. Y. App. Div. 525. In the present case, however, it does not appear that the defendant indorsed for the maker's accommodation. If his indorsement to the plaintiff was an independent transaction, then the indorser could have recorded the mortgage while in his hands. He is, then, as blamable as the plaintiff, and should not be discharged.

WILLS — CONSTRUCTION — GIFT TO A CLASS. — A will read, "I give the residue of my estate to my late husband's nephews and nieces, as follows: to A, B, C, D, and E, to be equally divided between them, share and share alike." Three of these legatees predeceased the testatrix. *Held*, that their shares should go intestate. *In re Deming's Will*, 174 N. Y. Supp. 172.

In the construction of wills there is a general presumption against intestacy. *Meiners* v. *Meiners*, 179 Mo. 614, 78 S. W. 795. This is especially true where there is a residuary clause, because it shows the testator meant to dispose of all his property by will. *Welsh* v. *Gist*, 101 Md. 606, 61 Atl. 665. Neverthe-